



February 15, 2019

Steve Davidow, P.E.
Quanta Subsurface LLC
4308 N. Barker Rd
Spokane Valley, WA 99027

RE: Formal Response to Request for Policy Advisory Request Regarding Licensing Requirements
for Contractors and Subcontractors

Dear Mr. Davidow:

The Texas Board of Professional Engineers (Board) met in public session on February 14, 2019 and approved this response to your request, dated July 27, 2018.

Request:

The requestor seeks guidance on the following scenarios:

1. Is a contractor required to be a licensed Texas engineer to enter into an Engineering, Procurement, and Construction contract that involves procuring engineering services for its privately-owned client? The contract will include services that undisputedly constitute the practice of engineering under Texas Law. More specifically, the contract would not require the contractor to personally perform the engineering services but would allow the engineering services to be performed by a subcontractor. However, the contractor would be responsible for supervising the delivery of the subcontractor's services and would have authority for all aspects of the work under the contract, including the engineering portion.
2. If the Scenario in Item 1 required the contractor to personally perform the engineering services, would a licensed Texas engineer be needed?

Response:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of a statute or board rule and does not need to go through the Policy Advisory process.

The Texas Engineering Practice Act (the Act) establishes practice requirements for engineers in the state of Texas, including general guidelines for how to handle contracting situations. The answers to the proposed scenarios follow.

1. A contractor offering or entering into an agreement that would require it to be fully responsible for and oversee engineering work in Texas would have to be a registered engineering firm and the actual work would have to be done by a licensed professional engineer. An unlicensed individual or unregistered firm cannot offer or undertake engineering work under the Act. Specifically, Section 1001.301(a) of the Act, relating to License Required, states:

(a) A person may not engage in the practice of engineering unless the person holds a license issued under this chapter.

Note, the term "practice of engineering" is defined in Section 1001.003 of the Act.

Further, Section 1001.405 of the Act, relating to Practice by Business Entity and Registration states:

- (a) In this section, “business entity” includes a sole proprietorship, firm, partnership, corporation, or joint stock association.**
- (b) A business entity may not engage in the practice of engineering in this state unless:**
 - (1) the business entity is registered with the board; and**
 - (2) the practice is carried on only by engineers...**
- (e) A business entity may not represent to the public that it is engaged in the practice of engineering under any business name or use or cause to be used the term “engineer,” “engineering,” “engineering services,” “engineering company,” “engineering, inc.,” “ professional engineers,” “licensed engineer,” “registered engineer,” “licensed professional engineer,” “registered professional engineer,” or “engineered,” or any abbreviation or variation of those terms, or directly or indirectly use or cause to be used any of those terms in combination with other words, letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name unless:**
 - (1) the business entity is registered under this section;**
 - (2) the business entity is actively engaged in the practice of engineering; and**
 - (3) each service, work, or act performed by the business entity that is part of the practice of engineering is either personally performed by an engineer or directly supervised by an engineer who is a regular full-time employee of the business entity.**

However, if at the time it was executed, the contract included language clearly designating the specific registered engineering firm that would be responsible for the engineering work, the arrangement would be permissible under the Act. The primary contractor could be responsible for supervising the delivery of the services by the engineering firm, but to comply with the Act, the contract must make clear that all decisions about engineering would be made by the registered engineering firm designated at the time at which the contract was executed.

2. If the contractor were personally performing engineering services for its client rather than just taking ultimate responsibility for the services, the answer would be the same as in the first paragraph of Scenario 1.

Note, this response is specific to your request regarding a contractual arrangement between a privately-owned client and a contractor. While all contracting of engineering work in Texas is subject to the Act, please note that contracting involving a governmental entity as the client is also subject to the Professional Services Procurement Act (PSPA), as detailed in Board Rule §137.53, relating to Engineer Standards of Compliance with Professional Services Procurement Act.

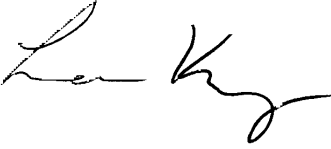
Further note, PSPA requires that for public projects, the governmental entity that is the client must select the engineering contractor first based on its qualifications, known as Qualifications Based Selection (QBS), before then attempting to negotiate a fair and reasonable price. Full text of the PSPA can be found at <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2254.htm>

Conclusion:

No new Policy Advisory Opinion will be developed for this request.

Thank you for your support of the policy advisory opinion process. If you have any questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement, at (512) 440-7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is fluid and cursive, with the first name "Lance" and the last name "Kinney" clearly distinguishable.

Lance Kinney, P.E.
Executive Director

LK:MZS:asm